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TO AMEMBASSY PORT OF SPAIN PRIORITY

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E.O. 11652: N/A

TAGS: PFOR

SUBJ: REQUEST FOR SUGGESTION OF IMMUNITY IN CASE OF VINCENTE
ET AL V. GOTT

1. THE EMBASSY OF THE GOTT HAS REQUESTED A SUGGESTION OF IMMUNITY ON OCTOBER 6, 1972, IN THE ABOVE-ENTITLED CASE WHICH IS PENDING IN A STATE COURT IN NEW YORK. THE DEPARTMENT AFTER EXTENSIVE CONSULTATIONS WITH THE DEPT OF JUSTICE HAS DECIDED NOT TO MAKE SUCH A SUGGESTION OF IMMUNITY. THE CONTENTS OF THE NOTE FROM THE GOTT EMBASSY AND THE REPLY NOTE BY THE DEPT, WHICH WILL BE DELIVERED AFTER THE AMEMBASSY NOTIFIES THE DEPT THAT AMBASSADOR MARSHALL HAS SPOKEN TO THE GOVERNOR GENERAL REGARDING THIS CASE, READ AS FOLLOWS:

QTE THE AMBASSADOR OF TRINIDAD AND TOBAGO PRESENTS HIS COMPLIMENTS TO THE SECRETARY OF STATE AND WISHES TO DRAW THE ATTENTION OF THE SECRETARY TO THE FOLLOWING FACTS AND CIRCUMSTANCES.

QTE TRINIDAD AND TOBAGO IS BEING SUED IN SUPREME COURT
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OF THE STATE OF NEW YORK UNDER THE NAME OF 'THE STATE OF

TRINIDAD AND TOBAGO', IN RESPECT OF AN ACT ALLEGEDLY WRONGFUL, WHICH OCCURRED TOTALLY WITHIN ITS JURISDICTION. AT THE TIME OF THE OCCURRENCE COMPLAINED OF, THE PLAINTIFF

IN THE ACTION WAS RESIDENT IN TRINIDAD AND TOBAGO, AND HAD NO RELATIONSHIP TO THE UNITED STATES OR THE FORUM STATE, NEW YORK. IT WAS SOME TIME AFTER THE OCCURRENCE THAT HE LEFT TRINIDAD FOR NEW YORK.

QTE SINCE THE ACT COMPLAINED OF DID NOT OCCUR WITHIN THE FORUM STATE NOR WITHIN THE TERRITORIAL JURISDICTION OF THE UNITED STATES, NOR DID IT ARISE OUT OF ANY ACTIVITY CARRIED ON BY TRINIDAD AND TOBAGO WITHIN THE TERRITORIAL JURISDICTION OF THE UNITED STATES, TRINIDAD AND TOBAGO SUBMITS THAT A SUGGESTION OF SOVEREIGN IMMUNITY SHOULD ISSUE. TRINIDAD AND TOBAGO SHOULD NOT BE CALLED UPON TO ANSWER IN THE COURTS OF THE STATE OF NEW YORK FOR AN ACT COMMITTED TOTALLY WITHIN ITS JURISDICTION AND SUBJECT TO ITS LAWS. TRINIDAD AND TOBAGO RESPECTFULLY SUBMITS THAT THIS IS NOT A CASE FOR A DISCUSSION OF WHETHER OR NOT THE CLASSICAL OR RESTRICTIVE THEORY OF IMMUNITY SHOULD APPLY BUT WHETHER IMMUNITY IS AVAILABLE. IF TRINIDAD AND TOBAGO IS CALLED ON TO ANSWER AND DEFEND THIS CASE IN THE COURTS OF THE STATE OF NEW YORK THIS WOULD IN FACT BE A TOTAL DENIAL AND ABROGATION OF THE DOCTRINE OF SOVEREIGN IMMUNITY.

QTE THE AMBASSADOR OF TRINIDAD AND TOBAGO AVAILS HIMSELF OF THE OPPORTUNITY TO RENEW TO THE SECRETARY OF STATE THE ASSURANCES OF HIS HIGHEST CONSIDERATION. UNQTE

OUR NOTE IN REPLY:

QTE THE ACTING SECRETARY OF STATE PRESENTS HIS COMPLIMENTS TO HIS EXCELLENCY THE AMBASSADOR OF TRINIDAD AND TOBAGO AND HAS THE HONOR TO REFER TO HIS NOTE NUMBERED ADM 27/1/3 DATED OCTOBER 6, 1972, REQUESTING THAT THE DEPARTMENT OF STATE RECOGNIZE AND SUGGEST TO THE SUPREME COURT OF THE STATE OF NEW YORK THAT THE GOVERNMENT OF TRINIDAD AND TOBAGO IS ENTITLED TO SOVEREIGN IMMUNITY FROM SUIT LIMITED OFFICIAL USE

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IN AN ACTION PENDING IN THAT COURT ENTITLED ANTONIO VINCENTE AND CONSUELO NOGUERA V. STATE OF TRINIDAD AND TOBAGO, PORT OF SPAIN GENERAL HOSPITAL, DR. RUBY LAKE-RICHARDS AND DR. HUGH SPICER, NUMBER 7917/70. THE SAID CAUSE OF ACTION IS BASED ON ALLEGED MALPRACTICE IN THE PORT OF SPAIN GENERAL HOSPITAL IN TRINIDAD AND TOBAGO IN JUNE OF 1960.

QTE IN CONSIDERING REQUESTS FOR SUGGESTIONS OF SOVEREIGN IMMUNITY, THE DEPARTMENT OF STATE APPLIES THE 'RESTRICTIVE THEORY OF SOVEREIGN IMMUNITY' ANNOUNCED IN THE 'TATE LETTER,' PUBLISHED IN 26 DEPARTMENT OF STATE BULLETIN 984 (1952) AND REPUBLISHED IN 6 WHITEMAN, DIGEST OF INTER-

NATIONAL LAW 569 (1968). AS THE AMBASSADOR IS AWARE, UNDER THAT THEORY, THE IMMUNITY OF A SOVEREIGN IS RECOGNIZED WITH REGARD TO SOVEREIGN OR PUBLIC ACTS OF A STATE, BUT NOT WITH RESPECT TO ACTS WHICH ARE OF A PRIVATE CHARACTER.

QTE THE DEPARTMENT OF STATE HAS GIVEN MOST CAREFUL CONSIDERATION TO THE REQUEST OF THE GOVERNMENT OF TRINIDAD AND TOBAGO. IT HAS STUDIED THE CONSIDERATIONS ADVANCED IN THE AMBASSADOR'S NOTE AND IN THE LETTER OF THE COUNSEL REPRESENTING THE EMBASSY WHEREIN THE DEPARTMENT OF STATE IS URGED NOT TO CONSIDER THIS AS A CASE FOR A DISCUSSION OF WHETHER OR NOT THE CLASSICAL OR RESTRICTIVE THEORY OF IMMUNITY SHOULD APPLY BUT WHETHER IMMUNITY IS AVAILABLE. THE DEPARTMENT OF STATE HAS ALSO CONSIDERED THE ARGUMENTS ADVANCED BY COUNSEL FOR THE PLAINTIFFS.

QTE AFTER WEIGHING ALL ASPECTS OF THIS MATTER, THE DEPARTMENT OF STATE HAS CONCLUDED THAT UNDER UNITED STATES PRACTICE AND JURISPRUDENCE THE ACTIVITIES IN QUESTION WERE ESSENTIALLY OF A PRIVATE NATURE FOR PURPOSES OF THE TATE LETTER AND THAT THE RESTRICTIVE THEORY OF IMMUNITY DESCRIBED IN THE TATE LETTER MUST BE APPLIED IN THIS CASE. WHILE SYMPATHETIC TO THE POSITION OF THE GOVERNMENT OF TRINIDAD AND TOBAGO IN THIS CASE, THE DEPARTMENT OF STATE CAN NOT, CONSISTENT WITH ITS PRACTICE IN THESE LIMITED OFFICIAL USE

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CASES, MAKE A SUGGESTION OF IMMUNITY BASED ON CONSIDERATIONS IN THE NATURE OF THE CONVENIENCE OF THE FORUM OR SERVICE OF PROCESS.

QTE THE DEPARTMENT WISHES TO EMPHASIZE THAT ITS CONCLUSION REGARDING THE RECOGNITION AND SUGGESTION OF IMMUNITY IN THIS CASE IS IN NO WAY INTENDED TO REFLECT UPON THE VIEWS OF THE GOVERNMENT OF TRINIDAD AND TOBAGO ON THE MERITS OF THIS CASE OR UPON THE APPLICABILITY OF ANY OTHER DEFENSE SUCH AS FORUM NON CONVENIENS, SERVICE OF PROCESS, OR THE LIKE OR ANY OTHER LEGAL ISSUES APART FROM THE QUESTION OF SOVEREIGN IMMUNITY AS EVALUATED UNDER THE RESTRICTIVE THEORY ANNOUNCED IN THE TATE LETTER. THESE QUESTIONS ARE OUTSIDE THE DOMAIN OF THE DEPARTMENT OF STATE IN PASSING

UPON THE QUESTION OF SOVEREIGN IMMUNITY AND ARE PROPERLY
RESERVED FOR THE COURTS. UNQTE

2. WHEN DISCUSSING THIS MATTER WITH THE APPROPRIATE GOVT
OFFICIALS, EMBASSY MAY O
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